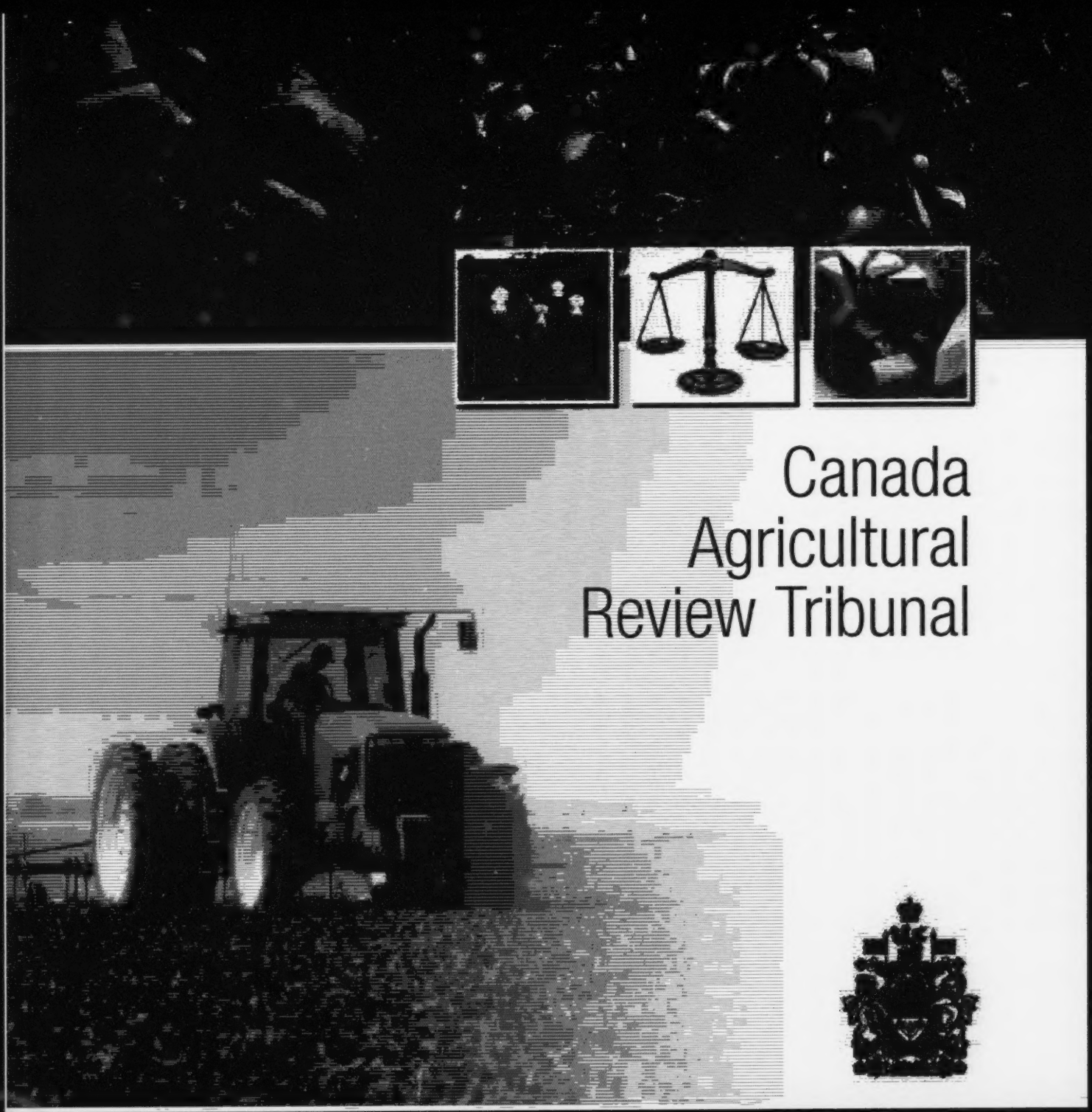

Canada Agricultural Review Tribunal

2010-2011
Annual Report

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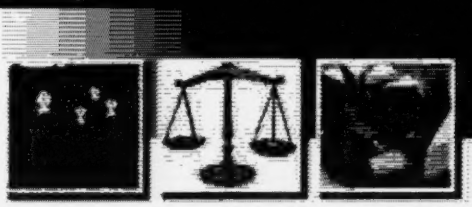


Message from the Chairperson

It is has been an exciting year, full of challenges and opportunities, at the Canada Agricultural Review Tribunal (Tribunal). This Annual Report, the third one issued since I was appointed to the position of Chairperson, captures some of the activities that have occurred in the fiscal year 2010-2011 covering the period April 1, 2010 to March 31, 2011. The Tribunal continues to pursue excellence in each of its functions: quasi-judicial decision making; innovation and outreach to stakeholders and the general public; development of best practices; and sound financial management and administration of Tribunal operations. I continue to strive to set and meet goals relating to the timeliness, transparency, accountability, efficiency, effectiveness and risk management at the Tribunal, in view of my joint functions entrusted to me by Parliament under the *Canada Agricultural Products Act* as Chairperson and Chief Executive Officer of the Tribunal.

There were several highlights in the fiscal year 2010-2011 where Tribunal personnel worked diligently to realize the Tribunal goals of improved timeliness, transparency, accountability, efficiency, effectiveness and risk management at the Tribunal.

With respect to timeliness, efficiency and effectiveness, the Tribunal has reduced the backlog of cases awaiting an oral hearing. The Tribunal has developed processes to move new cases along more quickly and encourages parties to agree to hearing dates without undue delay, thereby reducing wait-times from requests for review to decisions, consequently providing applicant farmers, producers, transporters, auction barns and slaughter houses, as well as travellers coming into Canada, a resolution of their cases on a more expeditious basis. As well, through its development and distribution of Practice Notes, the Tribunal is working towards making its practices clearer and more consistent to those using the Tribunal's services. With respect to transparency and accountability to stakeholder parties that appear before the Tribunal and to the general public, Tribunal personnel can be justifiably proud of developing and executing a totally re-engineered Tribunal Web site. The Web site redesign project spanned more than 10 months and culminated in an electronic presence for the Tribunal that is user-friendly, informative and the "nerve-centre" for more than 10 years of Tribunal decisions, the legislation constituting and used by the Tribunal and parties, and the forms (with instructions) for commencing an action before the Tribunal, as well as a page on proactive disclosure of expenses at the Tribunal. This new Web site provides a transparency and accountability that supersedes anything that was available to the general public in the past.

I am proud, therefore, to present to you, Minister, the 2010-2011 Annual Report of the Tribunal. This report represents my commitment to making the Tribunal provide greater transparency, accessibility and accountability to you, to Parliament and to the people of Canada. The activities of the Tribunal set out in this report highlight the specific and important role the Tribunal plays in assisting the Government of Canada achieve its goals of food safety and the economic viability of Canadian agriculture within the context of a fair and just administrative monetary penalty system.

Dr. Donald Buckingham, Chairperson
June 30, 2011

The Tribunal's Mandate, Mission and Vision

Mandate

The Canada Agricultural Review Tribunal (Tribunal) is an independent, quasi-judicial body established by Parliament, pursuant to section 4.1 of the *Canada Agricultural Products Act* (CAP Act).

The Tribunal's primary role is to provide independent oversight, through the exercise of its review jurisdiction, of federal agencies' use of Administrative Monetary Penalties (AMP) in relation to agriculture and agri-food. These AMP systems form part of several federal agencies' "escalating scale of enforcement" providing an expeditious, non-punitive means to promote regulatory compliance. Alleged violators have the right to seek a review of certain AMP violations before the Tribunal. Decisions from three agencies – the Canadian Food Inspection Agency (CFIA), the Canada Border Services Agency (CBSA), and the Pest Management Regulatory Agency (PMRA), as well as certain decisions of the Minister of Agriculture and Agri-Food and the Minister of Health – currently fall under the Tribunal's review jurisdiction.

The Tribunal maintains an independent, quasi-judicial, arm's length relationship from Agriculture and Agri-Food Canada and its Minister, as required by the provisions of the CAP Act and the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act). Subsection 4.2(1) of the CAP Act provides that no member of the Tribunal may concurrently hold employment in the federal public administration. Pursuant to subsection 8(1) of the same Act, the Tribunal is a court of record and has an official seal that is subject to judicial notice.

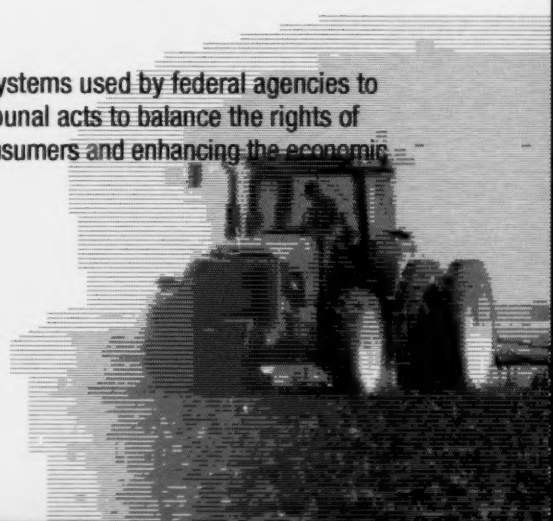
This legislative framework for the constitution and operation of the Tribunal demonstrates Parliament's intention for a relationship between the Minister of Agriculture and Agri-Food and the Tribunal that is mindful of the necessity for safeguarding the integrity and independence of the Tribunal to carry out all aspects of its mandate. The Tribunal is responsible to Parliament through the Minister of Agriculture and Agri-Food.

Mission

The mission of the Tribunal is to provide an independent, fair, informal and timely review of the validity of administrative monetary penalties issued to any person by a federal agency under the AMP Act.

Vision

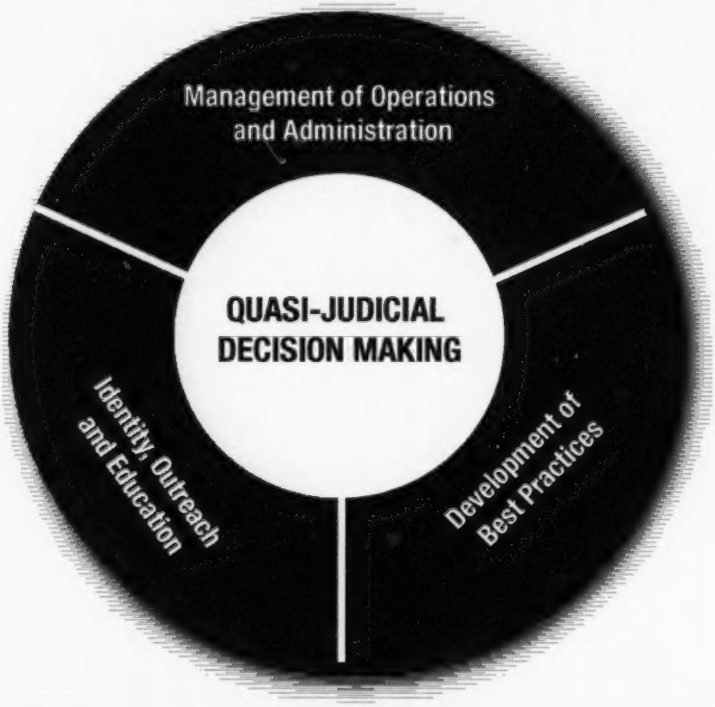
The vision of the Tribunal is to safeguard the integrity of the AMP systems used by federal agencies to ensure compliance with agriculture and agri-food statutes. The Tribunal acts to balance the rights of Canadians while protecting the health and well-being of Canadian consumers and enhancing the economic vibrancy of Canadian agriculture.



Understanding the Tribunal Better

Functions of the Tribunal

The core activity of the Tribunal is to provide quasi-judicial review of Notices of Violation for contraventions specified under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* and *Regulations* and reviews of decisions of the Board of Arbitration under the *Canada Agricultural Production Act*. Important ancillary activities of the Tribunal include identity, outreach and education activities, development of best practices and management functions. In the pages that follow, each of these Tribunal activities will be presented in terms of accomplishments in 2010-2011 and priorities for 2011-2012.


Management of Operations and Administration
QUASI-JUDICIAL DECISION MAKING
Identity, Outreach and Education
Development of Best Practices

Quasi-Judicial Decision Making

The Tribunal issued 30 decisions in 2010-2011, up from 23 in 2009-2010. Of these 30 decisions, 19 resulted from oral hearings held across the country, five from reviews of written submissions alone, and six from directions from the Federal Court of Appeal for reconsideration of cases already heard by the Tribunal which had been referred to the Federal Court of Appeal for judicial review. Of the 19 decisions arising from oral hearings, 16 were conducted in English and three in French. All five decisions in the cases arising from written submissions alone were conducted in English. Five of the six decisions arising from reconsiderations involved cases that had been conducted at the Tribunal in English.

From a caseload perspective, there were 81 cases in the Tribunal system at the start of the year and 62 at the end of it. Among these cases, just under 10% (6/62) were inadmissible for review, either because they were filed beyond the limitation period, because the alleged violator had already paid the violation, or because the applicant had already filed a request for review to the Minister. Of the remaining 56 cases, persons requesting a review chose to proceed by way of oral hearing in 39 cases, with 17 cases reviewed by written submissions alone.

The Tribunal issued its 30 decisions in 2010-2011 for cases that had been heard in 10 centres across Canada: one in Quebec (Montreal), three in Ontario (Ottawa, Brampton, and Toronto), two in Manitoba (Dauphin and Winnipeg), three in Saskatchewan (Saskatoon, Swift Current and Regina), and one in Alberta (Calgary). Of the 30 decisions, six were reconsiderations of prior Tribunal cases as directed by the Federal Court of Appeal (FCA), 17 were requests for review stemming from CFIA-issued Notices of Violations, six were from CBSA-issued Notices of Violation and one was from an applicant's request for review of a decision of the Minister of Agriculture and Agri-Food. Of the 24 first-instance decisions, the Tribunal overturned seven of Agency Notices of Violation and upheld the remaining 17. Of the six cases referred back to it from the Federal Court of Appeal, the Tribunal ordered that all six Notices of Violation be upheld. In 2010-2011, no persons sought reviews from Notices of Violation issued by the Pest Management Regulatory Agency.

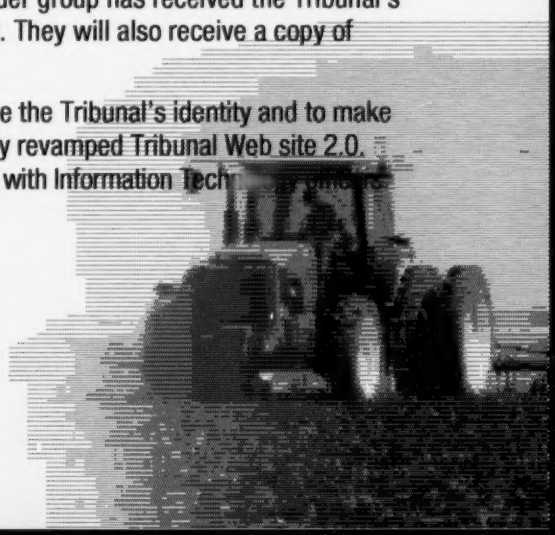
The Tribunal continued two important procedural changes started in 2009-2010. It continued its use of the Neutral Citation Style to bring its practices for case notation and citation in line with the major courts and tribunals in Canada. Easy reference can now be made to Tribunal decisions, which can be accessed at anytime by the public at its Web site: http://cart-crac.gc.ca. The second notable accomplishment of the Tribunal is that it continues to refine and clarify certain practices and procedures before the Tribunal through its development and issuance of "Practice Notes", now totalling eight in all (five issued in 2009-2010 and three in 2010-2011). Stakeholders are sent a copy of issued Practice Notes, which are also accessible on the Tribunal Web site.

For 2011-2012, the Tribunal will continue to work towards reducing caseload backlog so that it can establish a benchmark of timeliness for the rendering of decisions.

■ Identity, Outreach and Education

The Tribunal has undertaken several specific efforts to become more transparent, accountable, accessible and effective in the delivery of its mandate. Throughout the year, stakeholder groups were contacted to inform them of the activities of the Tribunal. As well, each stakeholder group has received the Tribunal's second Annual Report and Practice Notes 6, 7 and 8 of the Tribunal. They will also receive a copy of this Annual Report.

The primary activity of Tribunal personnel this past year to enhance the Tribunal's identity and to make it more transparent to the general public was the launch of the totally revamped Tribunal Web site 2.0. After countless hours of drafting content, arranging pages and liaising with Information Tech[illegible]



at Agriculture and Agri-Food Canada, who provide services to the Tribunal to maintain its site, the new Tribunal Web site was launched at http://cart-crac.gc.ca in August 2010. Other identity and outreach initiatives undertaken in 2010-2011 included the conclusion of the Chairperson's courtesy visits with each of the five other Agriculture and Agri-Food Portfolio members to discuss common issues, concerns and best practices. Having visited the President of the Canadian Food Inspection Agency and the Chief Executive Officer of the Canadian Dairy Commission last year, Dr. Buckingham visited the Chief Commissioner of the Canadian Grain Commission, the President and Chief Executive Officer of Farm Credit Canada and the Chairman of the Farm Products Council of Canada this year. As well, the Tribunal's Chairperson met with the Deputy Minister of Agriculture and Agri-Food to discuss issues of mutual interest and, in particular, matters relating to the clarification of the role of the Department and the Minister in Tribunal independence, governance and risk management. Dr. Buckingham was also engaged this past year in various continuing education events exploring public sector and administrative tribunal topics of application to the Tribunal's work.

An important priority for 2011-2012 for identity, outreach and education activities of the Tribunal is to continue to maintain the currency of the Tribunal Web site, to migrate its decision database to a new service provider, which will facilitate more rapid uploading of its decisions and the continuation of the development of Practice Notes for persons appearing before the Tribunal.

Development of Best Practices

The Canada Agricultural Review Tribunal was created in 1983 to review decisions of the Board of Arbitration regarding the licensing of, and disputes between, fruit and vegetable dealers in Canada. In 1997, the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act) added a new slice of review jurisdiction to the work of the Tribunal, that being the review of the Notices of Violation issued under any of nine agri-food Acts listed in the AMP Act. In 2000 and 2001, regulations were brought into force for three of the nine agri-food Acts (*Health of Animals Act, Plant Protection Act,* and *Pest Control Products Act*). This new jurisdiction significantly increased the workload of the Tribunal and has become the mainstay of its activities. In October of 2010, the Regulations under the AMP Act were amended with the result that administrative monetary penalties for violations under the Act, in some cases, quadrupled. Minimum penalties are now set at $500 with maximum penalties up to $15,000 per event now possible. These increases will no doubt have a noticeable impact on the number of requests for review filed with the Tribunal in the months and years ahead, thus increasing its caseload in the future. How much of an increase will result remains to be seen.

In 2011-2012, the Tribunal will continue to evaluate best practices for assessing the Tribunal's constitution and mandate with the Minister and Deputy Minister of Agriculture and Agri-Food as well as with other government institutions, with a view to improving the provision of its services to Canadians and to the Government of Canada.

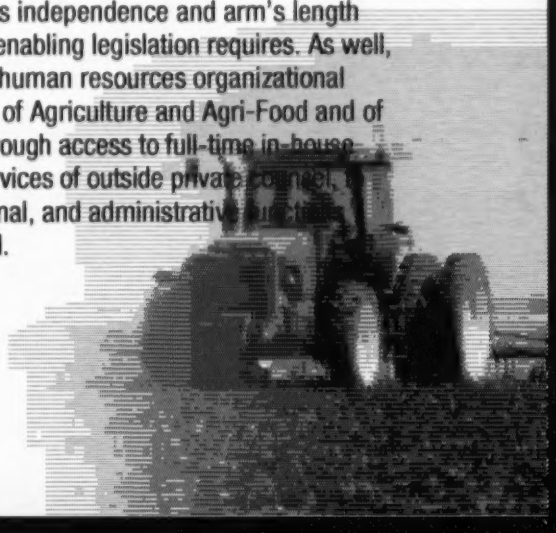
Management of Operations and Administration

Efficient and professional administration of the Tribunal office requires the Chairperson, as Chief Executive Officer of the Tribunal, to have in place appropriate human resources and financial mechanisms. To advance these objectives, the Chairperson engaged in a series of meetings with senior officials within the Central Agencies (Department of Finance, Privy Council Office and Treasury Board Secretariat) and the Ministries of Agriculture and Agri-Food and of Justice. The Chairperson was also active in associations of similarly situated organizations in the federal system through his membership in: the Community of Federal Agencies–Group of Heads of Federal Agencies, the Heads of Federal Administrative Tribunals Forum and the Council of Canadian Administrative Tribunals.

Some specific accomplishments achieved in 2010-2011 included a systematic review of all current expenditures of the Tribunal, the development and implementation of various office policies and the completion of performance evaluations and, for the first time, of learning plans at fiscal year-end for all Tribunal employees. In consultation with the Deputy Minister of Agriculture and Agri-Food, the Chairperson engaged the services of a management consultant firm, which was tasked with the job of examining the current structure of the Tribunal and recommending any necessary changes to better achieve its mandate. One challenge that remains for the Tribunal, the Minister and his Deputy are the steps and processes required, from a practical perspective, to preserve the arm's length relationship and independence of the Tribunal, thereby shielding the Minister and his Department from any risk of allegations of interference or reasonable apprehension of bias. One approach, used by several other tribunals and their Ministries, is the listing of the Tribunal as an independent institution under Schedule I.1 of the *Financial Administration Act*.

The Tribunal has engaged in several initiatives to identify and manage risk at the Tribunal. Two significant risks are due to current limitations identified within the current structure of the Tribunal. First, the Tribunal has no ready access to legal services to provide advice and minimize legal risks associated with the day-to-day and longer-term operations at the Tribunal, whether of an adjudicative, procedural, policy or administrative nature. Second, due to the small staff complement of the Tribunal, maintaining an adequately staffed Tribunal remains a challenge in light of staff leave, labour relations and other obligations. Even with such challenges, the Tribunal and its personnel were this past year diligent and committed in completing the operational tasks necessary to have the Tribunal fulfill its mandate in the service of Canadians.

In 2011-2012, the Tribunal will continue to develop good practices of financial management for all Tribunal spending. As well, Tribunal personnel will be encouraged to attend training to advance their career goals and to promote the smooth and professional operation of the Tribunal. The Tribunal will undertake to collaborate in the implementation of structures that will ensure its independence and arm's length relationship from the Minister and his Department as the Tribunal's enabling legislation requires. As well, in 2011-2012, the Tribunal will continue to examine and review its human resources organizational structure. In particular, it will seek to collaborate with the Ministers of Agriculture and Agri-Food and of Justice to ensure that it has timely access to legal services, either through access to full-time in-house legal counsel at the Tribunal or through the Tribunal's contracting services of outside private counsel, to advise on the execution of its quasi-judicial, best practices, operational, and administrative functions required to secure the prudent and efficient operation of the Tribunal.

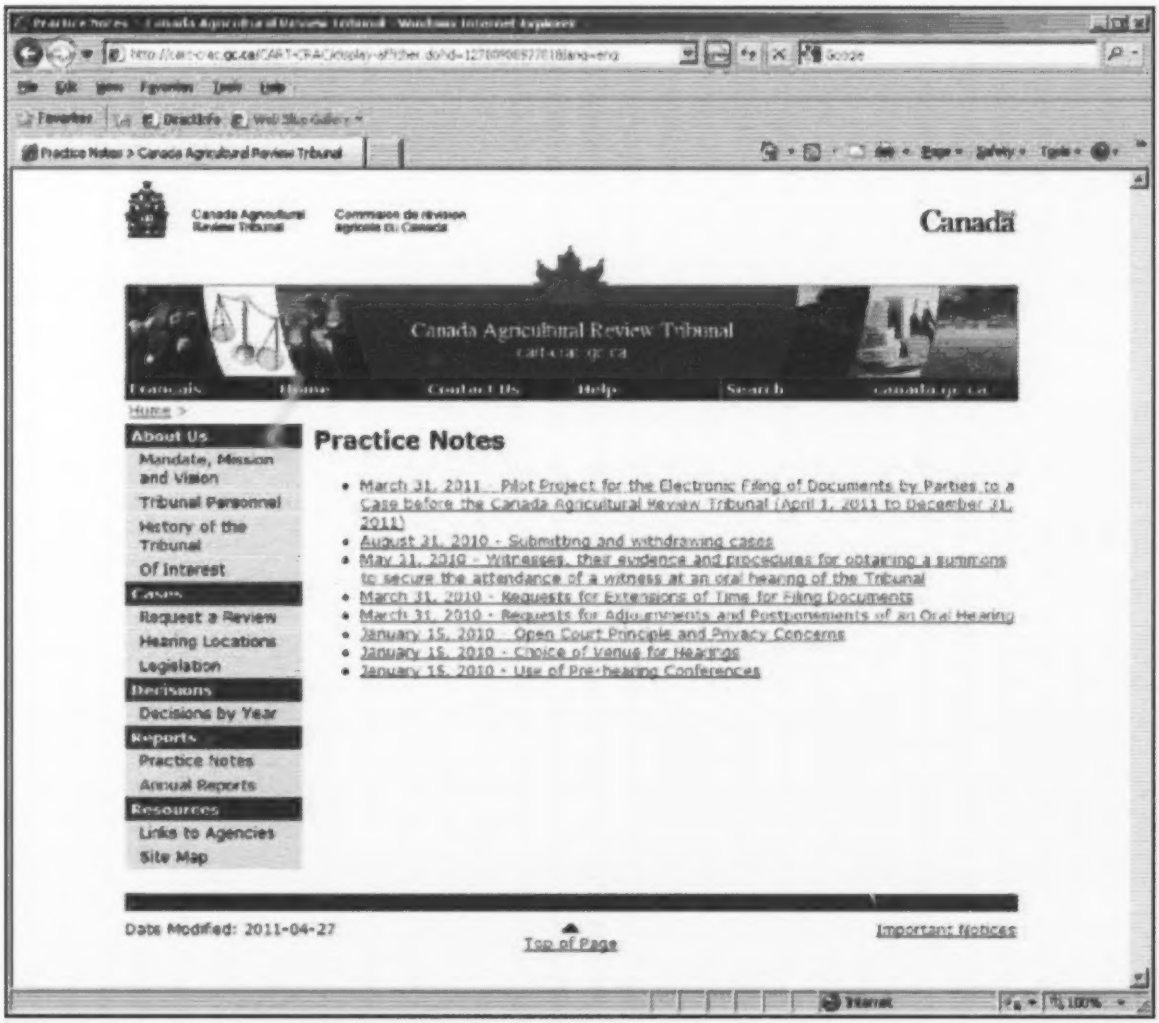


Making the Tribunal More User-friendly: Practice Notes

In order to provide better transparency to stakeholder groups who use the services of the Canada Agricultural Review Tribunal, the Tribunal has developed, to date, eight Practice Notes.

The Tribunal's Practice Notes offer guidance to all persons who appear before the Tribunal and explore issues of importance which set out good practice methodologies that the Tribunal has adopted in dealing with several recurring procedural matters.

Stakeholders and persons appearing before the Tribunal are invited to familiarize themselves with these Practice Notes, which can be found on the Tribunal's Web site: http://cart-crac.gc.ca.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Commission de révision agricole du Canada
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March 31, 2011 - Pilot Project for the Electronic Filing of Documents by Parties to a Case before the Canada Agricultural Review Tribunal (April 1, 2011 to December 31, 2011)
August 31, 2010 - Submitting and withdrawing cases
May 31, 2010 - Witnesses, their evidence and procedures for obtaining a summons to secure the attendance of a witness at an oral hearing of the Tribunal
March 31, 2010 - Requests for Extensions of Time for Filing Documents
March 31, 2010 - Requests for Adjournments and Postponements of an Oral Hearing
January 15, 2010 - Open Court Principle and Privacy Concerns
January 15, 2010 - Choice of Venue for Hearings
January 15, 2010 - Use of Pre-hearing Conferences
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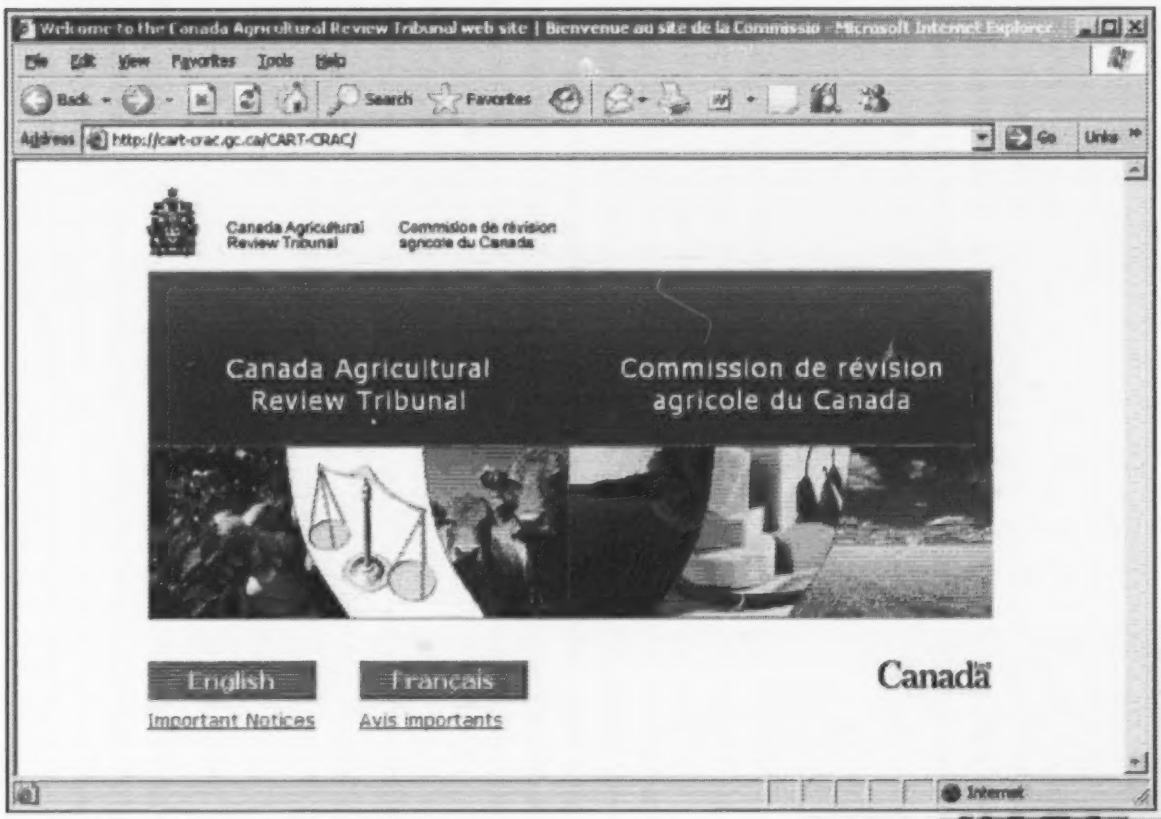
Important Notices

Making the Tribunal More User-friendly: Tribunal Web Site 2.0

A major project undertaken by the Tribunal during this past year was the complete overhaul of the Tribunal's Web site. In addition to incorporating the new elements requested by the Minister, i.e. Web-accessible proactive disclosure and a Web-accessible database of Tribunal decisions, the renovation of the Web site gave Tribunal personnel the opportunity to create a new look which was at the same time appealing to those visiting the Web site and more inline with the Web sites of other federal departments and agencies. Other new elements were added to help stakeholders and other visitors to the Web site better understand the practices and procedures of the Tribunal (e.g. Practice Notes, Annual Reports) and better able to access other information of general interest (e.g. Tribunal Personnel, History of the Tribunal).

The Tribunal staff collaborated to find a colour scheme and images that best reflected the work of the Tribunal, to overhaul the content of the existing Web site and to create and finalize the new content mentioned above. After a great deal of work, to Tribunal personnel's great delight, the new Web site was launched at http://cart-crac.gc.ca on August 26, 2010.


Welcome to the Canada Agricultural Review Tribunal web site | Bienvenue au site de la Commissio - Microsoft Internet Explorer
File Edit View Favorites Tools Help
Back Search Favorites
Address http://cart-crac.gc.ca/CART-CRAC/
Go Links
Canada Agricultural Review Tribunal
Commission de révision agricole du Canada
Canada Agricultural Review Tribunal
Commission de révision agricole du Canada
English
Français
Canada
Important Notices
Avis importants
Internet

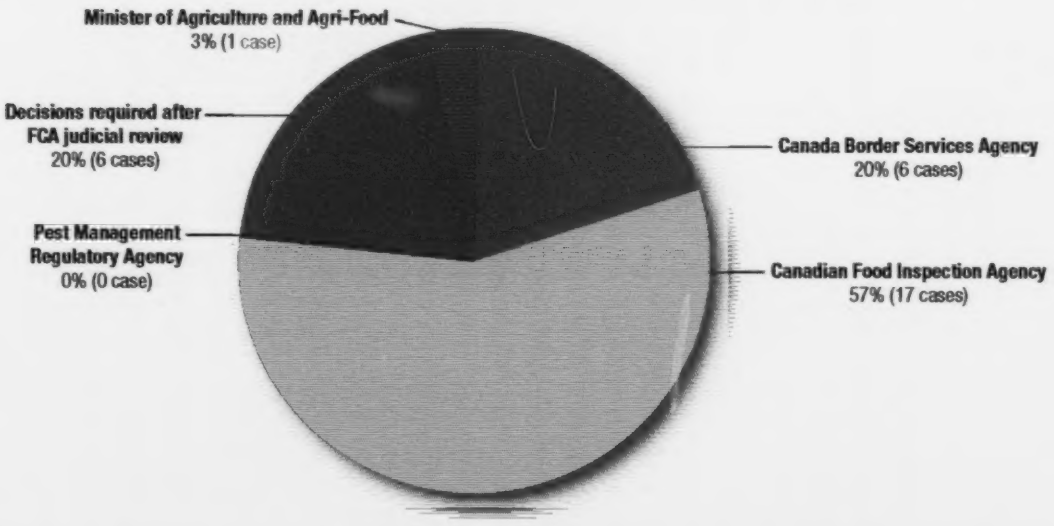
Tables and Graphs for 2010-2011 Activities

Tribunal Decisions – Table

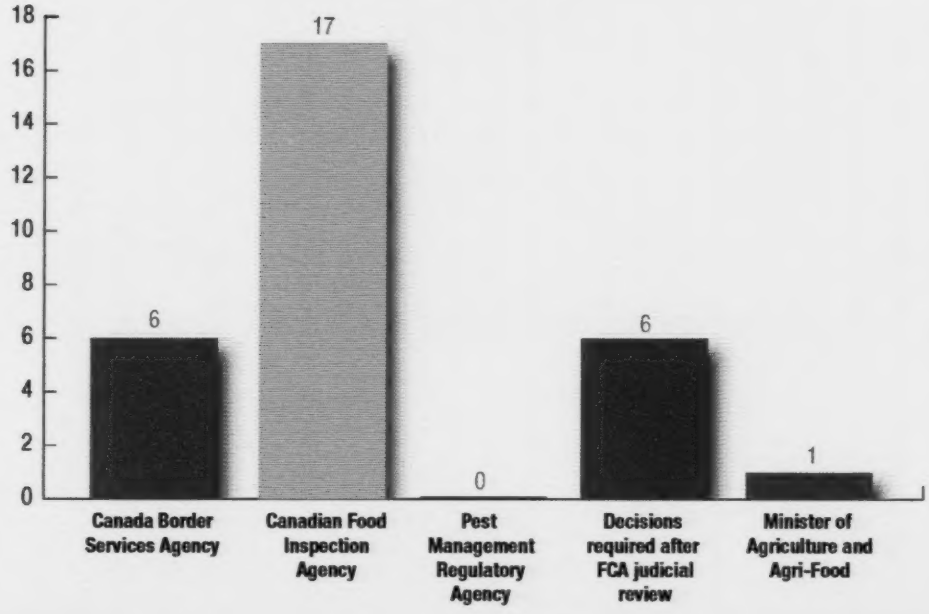
	2009-2010	2010-2011
Total number of decisions issued (by language)	**23**	**30**
From oral hearings	16	19
conducted in English	8	16
conducted in French	8	3
From written submissions	7	5
conducted in English	6	5
conducted in French	1	0
From reconsiderations from FCA	0	6
conducted in English	0	5
conducted in French	0	1
Total number of decisions issued (by agency)	**23**	**30**
For review of CFIA decision	11	17
oral hearings	9	15
written submissions	2	2
For review of CBSA decision	9	6
oral hearings	5	4
written submissions	4	2
For review of PMRA decision	0	0
oral hearings	0	0
written submissions	0	0
For review of Minister of AAF's decision	3	1
oral hearings	2	0
written submissions	1	1
From reconsiderations ordered by FCA	0	6
oral hearings	0	6
written submissions	0	0
Total number of 1st instance decisions issued (by result)	**23**	**24**
Notices of Violation from CFIA	11	17
upheld by Tribunal	6	13
dismissed by Tribunal	5	4
Notices of Violation from CBSA	9	6
upheld by Tribunal	5	3
dismissed by Tribunal	4	3
Review Decisions by Minister of AAF	3	1
confirmed by Tribunal	3	1
varied or set aside by Tribunal	0	0

■ Tribunal Decisions – Graphs

Tribunal Decisions – Percentage by Agency
Fiscal Year April 1, 2010 to March 31, 2011



Tribunal Decisions – Number by Agency
Fiscal Year April 1, 2010 to March 31, 2011



Oversight of the Tribunal by the Federal Court of Appeal

Oversight of Tribunal activities by the Federal Court of Appeal (FCA) occurs when one of the parties affected by a decision of the Tribunal may be unhappy with that decision and seeks judicial review of it before the FCA. Paragraph 28(1)*(b)* of the *Federal Courts Act* (R.S.C., 1985, c. F-7) gives the FCA jurisdiction to hear and determine applications for judicial review made in respect of the Canada Agricultural Review Tribunal. In such instances and after hearing the application, the FCA will either dismiss the application (and the decision of the Tribunal will be upheld), or the Court will sustain the application. In this latter case, the FCA will then either provide the decision the Tribunal should have made or will send the matter back to the Tribunal for reconsideration, providing the Tribunal with specific directions as to the basis on which the reconsideration is to take place. When required by the FCA to complete a reconsideration, the Tribunal is then charged with rendering a second decision in the matter according to the directions of the FCA which replaces its first one.

In 2010-2011, the FCA rendered decisions on two cases where parties sought judicial review of Tribunal decisions. In one case, the FCA dismissed the application for judicial review and upheld the Tribunal decision (*AG v. Rosemont Livestock*) while in the other case (*AG v. Steve Ouellet*), the Court sustained the application for judicial review, overturned the decision of the Tribunal, and ordered that the Tribunal reconsider its decision in light of the specific findings of the FCA, which it did in its decision *Ouellet v. Canada (CFIA)* (2010 CART 026) issued on November 16, 2010. In 2010-2011, the Tribunal also issued reconsideration decisions in five other cases (four cases under the FCA decision of *Canadian Food Inspection Agency v. Maple Lodge Farms Ltd.* (FCA file A-187-08) dated 4 February 2009) and *AG v. Denfield*) where the FCA sustained the applications for judicial review, overturned the decisions of the Tribunal, and ordered that the Tribunal reconsider its decisions in light of specific findings of the FCA.

	2009-2010	2010-2011
Active Tribunal files before the FCA:	5	2
Matters – filed in current year	2[1]	0
Matters – filed earlier, awaiting decision	0	0
Decisions – Applications Dismissed	0	1[2]
Decisions – Applications Allowed	2[3]	1[4]
Cases withdrawn or still pending	1[5]	0

1 *Steve Ouellet v. Canada (CFIA)* (RTA# 60361), decision rendered by the FCA on October 13, 2010 (2010 FCA 268); *Rosemont Livestock v. Canada (CFIA)* (2010 CART 004), decision rendered by the FCA on January 24, 2011 (2011 FCA 25).

2 *Attorney General of Canada v. Rosemont Livestock* rendered by the FCA on January 24, 2011 (2011 FCA 25).

3 *Doyon v. Canada (CFIA)* (RTA# 60323), decision rendered by the FCA on May 13, 2009 (2009 FCA 152); *Denfield v. Canada (CFIA)* (RTA# 60328), decision rendered by the FCA on February 3, 2010 (2010 FCA 36).

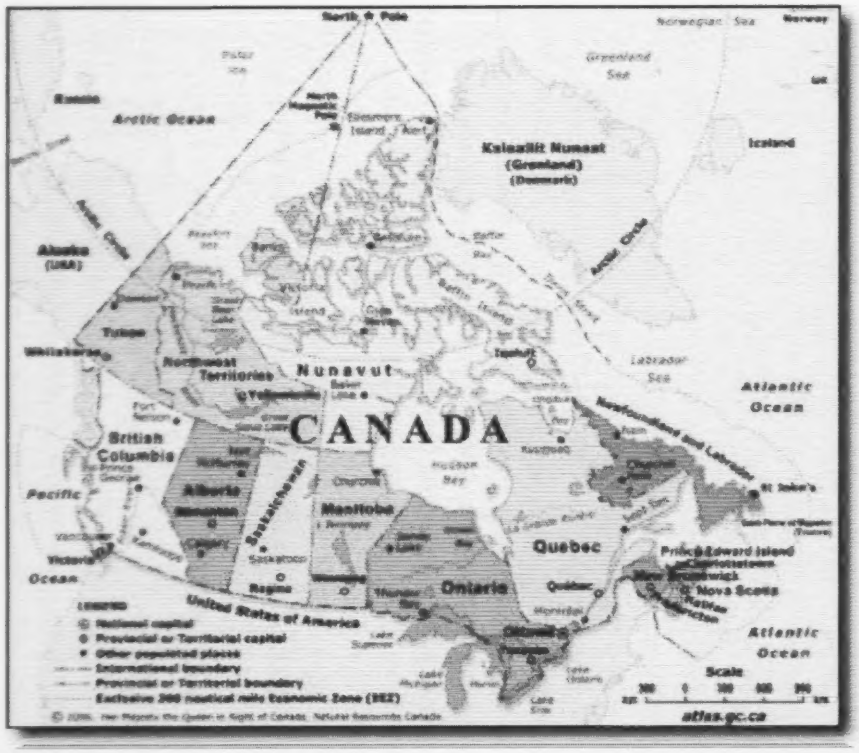
4 *Attorney General of Canada v. Steve Ouellet* rendered by the FCA on October 13, 2010 (2010 FCA 268), followed by Tribunal's reconsideration decision in *Ouellet v. Canada (CFIA)* (2010 CART 026), issued on November 16, 2010.

5 *Vold v. Canada (CFIA)* (RTA# 60330), filed with the FCA on November 26, 2008 (A-586-08), preliminary matter decided by the FCA (2009 FCA 192; A-586-08), withdrawn by "Notice of Discontinuance" by Attorney General of Canada, March 18, 2010.

Tribunal Caseload – Table

	2009-2010	2010-2011
Total Active Cases	81	62
Cases which were deemed inadmissible by the Tribunal	8	6
Total Admissible Cases before the Tribunal	73	56
Cases for which a hearing was requested	58	39
Hearing not yet scheduled	2	10
Hearing scheduled	17	8
Hearing completed awaiting decision	6	0
Cases withdrawn prior to a hearing	15	1
Cases withdrawn at or after hearing	1	0
Cases for reconsideration (FCA)	1	1
Hearing cases where decision issued	16	19
Cases where parties proceeded by written case alone	15	17
Cases not yet assigned	2	4
Cases assigned, awaiting decision	0	6
Cases withdrawn	6	2
Written cases where decision issued	7	5
Total First Instance Decisions by the Tribunal	23	24
Hearing		
Dismissed (decision of Agency upheld)	8	13
Allowed (decision of Agency overturned)	7	6
Dismissed (decision of Minister upheld)	1	0
Allowed (decision of Minister overturned)	0	0
Written file		
Dismissed (decision of Agency upheld)	5	3
Allowed (decision of Agency overturned)	2	1
Dismissed (decision of Minister upheld)	0	1
Allowed (decision of Minister overturned)	0	0
FCA-Directed Reconsiderations by the Tribunal	0	6
Total Decisions Rendered by the Tribunal	23	30

Authorized Locations for Tribunal Hearings in Canada



- 14 British Columbia locations
- 8 Alberta locations
- 6 Saskatchewan locations
- 4 Manitoba locations
- 25 Ontario locations
- 3 Yukon, Northwest Territories and Nunavut locations
- 18 Quebec locations
- 6 New Brunswick locations
- 7 Nova Scotia locations
- 2 Prince Edward Island locations
- 3 Newfoundland and Labrador locations

(For full details of exact locations, visit http://cart-crac.gc.ca)

Procedural Matters before the Tribunal

As a means to be more open and transparent and to permit the Tribunal to monitor activities other than the hearing of cases and the issuing of decisions, a process has been established at the Tribunal to collect data on all procedural matters that are brought before the Tribunal for consideration and decision. Commencing on January 1, 2011 and moving into the future, the Tribunal will be able to report on the number and kind of procedural matters coming before the Tribunal. For the period January 1, 2011 to March 31, 2011 (the last quarter of fiscal year 2010-2011), the Tribunal processed 30 procedural matters. Of these, 12 were notifications of request for review, four were requests for extensions of time for the filing of documents, four were requests for the granting of subpoenas, and the other 10 related to various procedural matters requiring directions from the Tribunal.

A Sampling of Tribunal Cases

Cases coming before the Tribunal include those where reviews have been requested by a person who has received a Notice of Violation from the Canadian Food Inspection Agency or from the Canada Border Services Agency, or where reviews have been requested by a person who has been dissatisfied with a decision of the Minister of Agriculture and Agri-Food regarding the assessment of an agriculture and agri-food administrative monetary penalty. Moreover, decisions by the Tribunal from any of these three types of cases can then be taken to the Federal Court of Appeal for judicial review. Below is a short synopsis of a typical case of each type which occurred in the fiscal year 2010-2011.

G.T. v. Canada (Canada Border Services Agency), 2010 CART 032

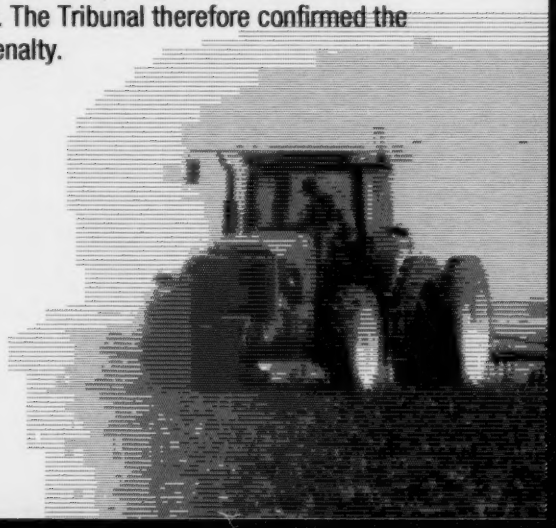
The applicant, a traveller returning from Jamaica, was alleged to have imported meat products into Canada without the necessary documentation and without declaring the meat products at his initial point of entry in Winnipeg. Having reviewed all the evidence, the Tribunal found that the Agency had not proved, on the balance of probabilities, that the Jamaican patties imported by the applicant actually contained meat and, as a result, found that the applicant did not commit the alleged violation and was not liable for payment of any monetary penalty.

G.K. v. Canada (Canadian Food Inspection Agency), 2010 CART 022

The applicant, a producer and shipper of cattle, was alleged to have failed to have reported to the proper authorities the numbers of identification tags of several animals he exported to the United States from Manitoba. Having reviewed all the evidence, the Tribunal found that the Agency had met the burden of proving that the applicant's cattle exported to the United States did not have their tags retired from the Canadian Cattle Identification Agency database within the required 30 days after their exportation. The penalty assessed by the Agency of $500 was upheld by the Tribunal.

I.T. v. Canada (Minister of Agriculture and Agri-Food), 2011 CART 004

The applicant received a decision from the Minister upholding the Agency's Notice of Violation alleging that he had imported meat products into Canada without the necessary documentation and without declaring the meat products at his initial point of entry in Calgary. The Minister ordered the applicant to pay the Agency a $200 penalty. The applicant sought a review of the Minister's decision by the Tribunal. Having reviewed the case, the Tribunal found that the Minister's decision revealed no error of law or error in the exercise of the Minister's jurisdiction. As well, the Minister rightfully refrained from substituting a Notice of Violation with Warning for the existing Notice of Violation with Penalty in the case. The Tribunal therefore confirmed the Minister's decision and ordered the applicant to pay the assessed penalty.



Canada (Attorney General) v. R.L., 2011 FCA 25

The applicant, a registered company in Ontario, was served a Notice of Violation with penalty in the amount of $500 from the Agency on the grounds that it transported or caused to be transported six lambs which were not tagged with an approved identification tag. Having reviewed all the evidence, the Tribunal found that the Agency was unable to provide sufficient evidence that its inspector had identified the untagged lamb as belonging to the applicant and that there was no clear causal chain proved by the Agency that the untagged lambs were actually untagged prior to their arrival at the stockyard. The Agency sought judicial review of the Tribunal decision to the Federal Court of Appeal. The Court upheld the Tribunal decision finding that the Agency failed to prove, on the balance of probabilities, that the lambs found to be untagged belonged to the R.L. and that R.L. had failed to tag the lambs. Given the deferential standard of review of reasonableness that applies in this case, the Court found no basis upon which to set aside the Tribunal's factual findings. This case is significant because it solidifies the role of the Tribunal in assessing the sufficiency of the factual basis of each element of a violation alleged by an Agency in Notices of Violation which it issues to farmers, transporters, travellers and all others exposed to potential liability under the *Agriculture and Agri-Food Administrative Monetary Penalties Act.*

Tribunal Expenditures

	2009-2010	2010-2011
Salaries & Benefits	398,881	351,971
Hearing & Travel Expenses	16,458	21,897
Property, Equipment Rental & Maintenance	39,596	39,037
Postage, Courier & Telecommunications	4,268	1,833
Publishing, Printing & Outreach	3,551	1,801
Training, Meetings & Conferences	4,385	1,017
Professional, Special & Contract Services	21,620	71,328
Materials, Supplies & Related Misc. Expenses	12,342	15,695
TOTAL	501,101	504,579

Challenges and Opportunities

The Canada Agricultural Review Tribunal is an independent, arm's length review body within the portfolio of the department and agencies that report to Parliament through the Minister of Agriculture and Agri-Food. Three issues continue to provide challenges and opportunities for the Tribunal as it is currently structured. They are:

1. Maintaining its arm's length identity from Agriculture and Agri-Food Canada and from the Minister;
2. Securing the ability to adequately staff the Tribunal, particularly with respect to procuring legal advice; and
3. Securing assurances of an adequate financial base for the Tribunal.

During the formation of the Tribunal in the 1990's, there was discussion of it becoming a listed Schedule I.1 *Financial Administration Act* (FAA) agency. While not necessary to ensure its independence through the FAA listing, such a listing would clarify the independence of the Tribunal and ensure that it is treated in the same fashion as other federal tribunals. Without such recognition, the Minister, the Department and the Tribunal risk exposure to allegations from the public or litigants that the Tribunal lacks true independence. Moreover, without the independence granted by virtue of a listing under Schedule I.1 of the FAA, personnel of the Department and the Tribunal must engage in on-going discussions to set appropriate parameters to ensure the provision of advice and services from the Department to the Tribunal and that proper administrative Treasury Board policies are followed, while recognizing the need to preserve and respect the Tribunal's independence.

Service arrangements have been concluded between the Department and the Tribunal on a fee-for-service basis in the areas of capital asset management and information technology services. However, personnel of the Department and the Tribunal continue to negotiate service agreements for financial, human resources, procurement and security services that are necessary for the proper conduct of the business of the Tribunal.

In the next fiscal year, the Tribunal will be working diligently to increase transparency, clarify governance structures and manage risk and change at the Tribunal. Accountability for human resources, finances and procurement require further delineation. To this end, negotiations will continue to be coordinated amongst the Tribunal, the Minister, his Deputy and, where warranted, Central Agencies (Treasury Board Secretariat, the Department of Finance, the Privy Council Office and the Public Service Commission). Increasing transparency, clarifying governance structures, managing risk and change at the Tribunal will permit the fuller use of the expertise of an independent arm's length body with considerable expertise in Canadian agriculture and agri-food matters.

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